

APPEAL NO. 172488
FILED DECEMBER 18, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 14, 2017, in (city), Texas, with (administrative law judge) presiding as the administrative law judge (ALJ). The ALJ resolved the disputed issues by deciding that: (1) the (date of injury), compensable injury extends to post-traumatic stress disorder (PTSD); (2) the respondent (claimant) reached maximum medical improvement (MMI) on October 4, 2016; and (3) the claimant's impairment rating (IR) is 31%.

The appellant (carrier) appeals the ALJ's determination that the compensable injury extends to PTSD as well as the ALJ's determinations of MMI and IR. The carrier contends that the causation evidence presented by the claimant did not meet the legal causation standards of medical probability and producing cause. The carrier additionally argues that the evidence established that the claimant's correct IR is 9%. The appeal file does not contain a response from the claimant.

DECISION

Affirmed in part as reformed and reversed and rendered in part.

The parties stipulated that the statutory date of MMI for this claim is October 4, 2016, and the Texas Department of Insurance, Division of Workers' Compensation (Division) appointed (Dr. T) as the last designated doctor to address MMI, IR, and extent of injury. Additionally, the parties stipulated that the carrier has accepted an (date of injury), compensable injury in the form of a crush injury to the right arm with multiple tendons, nerves, and muscles. We note the ALJ inadvertently left off "crush injury" in Finding of Fact No. 1.E. in the decision. Accordingly, we reform Finding of Fact No. 1.E. to include "crush injury" as stipulated to by the parties at the CCH. The claimant testified that he was injured when his right arm got pulled into a machine while he was working. The claimant testified that his arm was stuck in the machine for about an hour. The evidence reflects that the claimant had surgery on his right arm on (date of injury).

EXTENT OF INJURY

The ALJ's determination that the (date of injury), compensable injury extends to PTSD is supported by sufficient evidence and is affirmed.

MMI

The ALJ's determination that the claimant reached MMI on October 4, 2016, is supported by sufficient evidence and is affirmed.

IR

Section 408.125(c) provides that the report of the designated doctor shall have presumptive weight, and the Division shall base the IR on that report unless the preponderance of the other medical evidence is to the contrary, and that, if the preponderance of the medical evidence contradicts the IR contained in the report of the designated doctor chosen by the Division, the Division shall adopt the IR of one of the other doctors. 28 TEX. ADMIN. CODE § 130.1(c)(3) (Rule 130.1(c)(3)) provides, in pertinent part, that the assignment of an IR shall be based on the injured employee's condition as of the MMI date considering the medical record and the certifying examination. The ALJ found that the certification of MMI/IR from Dr. T is not contrary to the preponderance of the other medical evidence.

Dr. T examined the claimant on January 25, 2017, and certified that the claimant reached MMI on October 4, 2016, with a 31% IR using the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). Dr. T assessed 19% whole person impairment for the right upper extremity based on loss of range of motion, motor loss, and sensory loss. Dr. T assessed 14% whole person impairment for PTSD. Dr. T then combined the 14% impairment for the PTSD with the 19% impairment for the claimant's right upper extremity using the combined value chart of the AMA Guides, assessing 31% impairment. However, when using the combined values chart, combining 14% with 19% results in 30% impairment not 31% impairment.

The Appeals Panel has previously stated that, where the certifying doctor's report provides the component parts of the rating that are to be combined and the act of combining those numbers is a mathematical correction which does not involve medical judgment or discretion, the Appeals Panel can recalculate the correct IR from the figures provided in the certifying doctor's report and render a new decision as to the correct IR. See Appeals Panel Decision (APD) 171766, decided September 7, 2017; APD 152464, decided February 17, 2016; APD 121194, decided September 6, 2012; APD 041413, decided July 30, 2004; APD 100111, decided March 22, 2010; and APD 101949, decided February 22, 2011. Under the facts of this case, the certifying doctor's assigned IR can be mathematically corrected based on the impairment assigned for both the right upper extremity and PTSD. Accordingly, we reverse the ALJ's determination that the claimant's IR is 31% and render a new decision that the claimant's IR is 30%.

SUMMARY

We reform Finding of Fact No. 1.E. to read as follows: the carrier has accepted an (date of injury), compensable injury in the form of a crush injury to the right arm with multiple tendons, nerves, and muscles.

We affirm the ALJ's determination that the (date of injury), compensable injury extends to PTSD.

We affirm the ALJ's determination that the claimant reached MMI on October 4, 2016.

We reverse the ALJ's determination that the claimant's IR is 31% and render a new decision that the claimant's IR is 30%.

The true corporate name of the insurance carrier is **INDEMNITY INSURANCE COMPANY OF NORTH AMERICA** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201-3136.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge